IN THE HIGH COURT OF BOMBAY AT GOA

SECOND APPEAL NO.169/2005

Shri Gunu Piloo Gauns,
widow of Piloo Gauns,
r/o. House No. 830 (new), and old
House No.292,
Opp. Dempe College,
Miramar, Panaji, Goa. ..... Appellant.

V/s.

1. M/s. Shiroda Investments Pvt. Ltd.
   A private Limited Company
   bearing registration No.240/G
   and having its registered Office at
   Panaji, Goa represented herein by
   its Chairman Shri Prakash
   Rajaram Hede,
   residing at Panaji-Goa.

2. Smt. Priti Jana Gauns
   wife of Jana Pilu Gauns

3. Master Nilesh Jana Gauns, son, minor.

4. Master Giri Jana Gauns, son,
   minor, both the sons represented
   through true guardian mother
   Smt. Priti Jana Gauns, r/o. House
   No. 830, Opp. Dempe College,
   Miramar, Panaji-Goa.

5. Smt. Tulsi Anand Narvenkar
   w/o. Anand Narvenkar,
   Miramar, Panaji – Goa.

6. Shri Anandu Pilu Gauns,
   s/o Pilu Kusta Gauns,
   r/o. H.No. 829, Opp.
   Dhempe College, Miramar,
   Panaji-Goa.

7. Shri Delo Pilu Gauns,
   r/o. House No.830,

Opp. Dhempe College,
Miramar, Panaji-Goa.

8. Smt. Milan Janu Gauns,
wife of Janu Pilu Gauns
r/o. House No.830,
Opposite Dhempe College,
Miramar, Panaji, Goa. ..... Respondents.

Mr. R. G. Ramani, Advocate for the appellant.

CORAM : P.V. KAKADE, J.

DATE : 8TH AUGUST, 2006.

ORAL ORDER :

Heard Advocate for the appellant. None appears for the respondents , though duly served.

2. The present appeal is preferred against the Judgment and Order passed by the IInd Ad hoc Addl. District Judge, Panaji, where-by the appeal was dismissed and the Judgment and Order of the trial Court was confirmed.

3. I was taken through the Judgment of the appellate Court by the learned Counsel. It is seen that the appellate Court's Judgment is not only cryptic, but the lower appellate Court Judge has also not

complied with the provisions of Order 41, Rule 31 of the Code of Civil Procedure as he has not formulated the points for determination.

Rule 31, Order 41 of the Code of Civil Procedure stipulates thus :

> **31. Contents, date and signature of judgment -** The judgment of the Appellate Court shall be in writing and shall state -
>
> (a) the points for determination;
>
> (b) the decision thereon;
>
> (c)the reasons for the decision; and
>
> (d) where the decree appealed from is reversed or varied, the relief to which the appellant is entitled;
>
> and shall at the time that it is pronounced be signed and dated by the Judge or by the Judges concurring therein.

Therefore, it is crystal clear that the Judgment of the lower appellate Court shall contain points for determination, the decision thereon and the reasons for the said decision. Therefore, it must be noted that the Code imposes upon the Court of appeal, duty and obligation of giving a satisfactory judgment as is required by law and it is the duty of the Court to explain its reasons for so doing while performing its duty as Court of first instance. It is also to be noted that the provision of Rule 31 of Order 41 is mandatory and, therefore, the lower appellate Court Judge has to set out the points for determination, decision thereon and

give his own reasons and if the provisions are not complied with, sitting in second appeal or exercising the jurisdiction under Article 227 of the Constitution, should remand the case. This law is quite settled for long time not only by this Court, but also by the Apex Court.

4. In the present case before me, as noted earlier, the lower appellate Court has, after setting out the rival contentions, observed that he has gone through the record of the lower Court as well as the Judgment and Decree of the trial Court, the appeal memo and argument of both the sides and therefore, he was recording his findings accordingly. Instead of recording findings, 20 lines so called reasoning is given which neither satisfies the judicial conscious nor complies with the mandatory provision of Rule 31, Order 41 of Code of Civil Procedure.

5. In the case of **Lakshmi Ram Bhuyan v. Hari Prasad Bhuyan and others,** AIR 2003 SC 351, the Apex Court has observed that Order 41, Rule 31 casts an obligation on the author of the appellate judgment to state the points for determination, decision thereon, the reasons for the decision and when the decree appealed from is reversed or varied, the relief to which the appellant is entitled.

In view of this position, there is no doubt whatsoever that the appeal is required to be remanded to the first appellate Court for delivering the judgment as contemplated by the provisions of Order

41, Rule 31 C.P.C.. Hence, the order :

The impunged Order dated 19th July, 2005, passed by the IInd Ad hoc Addl. District Judge, Panaji is, hereby set aside. The matter is remanded to the said Court for hearing afresh, on the basis of the existing available evidence by giving opportunity to both the parties to argue the matter, if they wish and then to deliver the Judgment on merits as contemplated by Order 41, Rule 31 of the Code of Civil Procedure. The entire exercise should be completed and the matter should be disposed of by the lower appellate Court within six months from the date of receipt of writ of this Court. In view of the facts and circumstances, no order as to costs.

P.V. KAKADE, J.

ssm.